

376.265 Lien on real property for service to retail business by municipal utility -- Priority -- Statement of lien -- Action to enforce -- Release of lien by execution of bond.

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Charges" means all rates, charges, and other amounts payable for services rendered by a municipal utility, including and without limitation penalties, interest, reasonable attorney's fees, and other costs of enforcing the lien;
 - (b) "Municipal utility" means any public agency that owns or operates a system or facilities for the provision of gas, electric, sewer, water, or telecommunications service to retail customers;
 - (c) "Public agency" has the same meaning as specified in KRS 65.230;
 - (d) "Retail business ratepayer" means any nonresidential ratepayer of a municipal utility that is in arrears on the utility bill in an amount in excess of ten thousand dollars (\$10,000); and
 - (e) "Service" means gas, electric, sewer, or water service provided by the municipal utility.
- (2) Any municipal utility shall have a lien on the real property of a retail business ratepayer served by the municipal utility. The lien shall be for the collection of rates and charges for retail utility service provided to the retail business ratepayer. In no instance shall this lien attach to the real property of an owner who has leased the property to a retail business ratepayer unless the property owner is responsible for paying the utility charges under the lease agreement.
- (3) The lien shall arise and attach as services are provided to the retail business ratepayer and shall remain in place until the rates and charges for the services are paid in full. The lien is deemed a statutory lien within the meaning of 11 U.S.C. sec. 101(53).
- (4) The rights to a lien under this section:
 - (a) Are in addition to any other rights or remedies a municipal utility may have under the law or pursuant to a contract; and
 - (b) Are not intended to impair or alter any of the municipal utility's other rights or remedies, including the ability to require an additional deposit or to shut off and discontinue service.
- (5) The lien may take priority over a mortgage, a contract lien, or a bona fide conveyance for value if:
 - (a) The municipal utility files notice which is duly recorded or lodged for record according to law;
 - (b) The utility claiming the prior lien files a statement of lien in the office of the county clerk of the county where the service has been furnished before the recording of the mortgage, the contract lien, or the conveyance; and
 - (c) The statement of lien is in the form prescribed in subsections (6) and (7) of this section.

- (6) The statement of lien shall be subscribed and sworn to by an authorized representative of the municipal utility and shall identify the following:
 - (a) The municipal utility claiming the lien, including an address and a contact person;
 - (b) The property, by legal description, against which the lien is claimed;
 - (c) The nature of the service provided;
 - (d) The contract, if any, pursuant to which the services were provided; and
 - (e) The amounts, if any, due for services provided.
- (7)
 - (a) The statement of lien shall be recorded in the office of the county clerk of the county where the service is furnished or the property or some portion of the property serviced by the municipal utility is situated. The utility shall send a copy of the statement of lien by regular mail, postage prepaid, to the owner of the property at the owner's last known address or to the address associated with the tax bill for the property. The copy of the statement of lien shall be sent within ten (10) business days of its filing in the office of the county clerk.
 - (b) At any time, a municipal utility may supplement the statement of lien by recording the supplement in the same manner as the original statement of lien. Any supplement to the statement of lien shall relate back to the date of the original recording of the statement of lien.
- (8) The county clerk shall endorse each statement of lien on the date of its filing and the clerk shall make an abstract of the statement, endorse the abstract, and place it in a book to be kept by the clerk for that purpose. The book shall contain the following:
 - (a) The endorsed and indexed abstracts;
 - (b) The date of filing the statement;
 - (c) The name of the municipal utility;
 - (d) The name of the person against whose property the lien is filed; and
 - (e) A description of the property charged with the lien.
- (9) The clerk shall receive a fee pursuant to KRS 64.012 from the person filing the statement as full compensation, which shall be taxed and collected as other costs.
- (10) An action to enforce the lien under this section shall be by equitable proceedings and conducted as other proceedings in equity in similar cases. The petition shall allege the facts necessary to secure a lien, describe the property charged, and the plaintiff's interest in enforcing the lien. Lienholders may unite in the action to enforce the lien as plaintiffs, and those who are not plaintiffs shall be made defendants. The debtor or the debtor's personal representative, heirs, devisees, and all other persons having liens on or interests in the property sought to be subjected shall be made defendants.
- (11) The clerk of the court in which the petition is filed shall issue the proper process against the defendants. After the expiration of ten (10) days from the filing of the petition, the clerk of the court in which the petition was filed shall:
 - (a) Draw up an order referring the action to the master commissioner of the court and file it with the petition;

- (b) Deliver the pleadings and papers of the action to the commissioner; and
 - (c) Make a memorandum of the action in the minute book.
- (12) If, for any cause, it should be improper to refer the case to the master commissioner, the master commissioner is directed to select some suitable person to act as a new commissioner for the case and refer the case to him or her. However, before proceeding to act on the case, the new commissioner shall take an oath before the clerk and execute bond with sufficient surety. The bond shall be preserved by the clerk and reported to the court.
- (13) The owner or claimant of property against which a lien has been asserted may file a bond for double the amount of the lien claimed with the county clerk in the county where the lien was filed. Bond may be asserted at any time before a judgment is rendered enforcing the lien, and the bond shall have good sureties approved by the clerk and be conditioned upon the obligors satisfying any judgment that may be rendered in favor of the person asserting the lien. The bond shall be preserved by the clerk, and upon its execution, the lien upon the property shall be discharged. The person asserting the lien may make the obligors in the bond parties to any action to enforce its claim. Any judgment recovered may be against all or any of the obligors on the bond.

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